

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORBIT ONE COMMUNICATIONS, INC.,
and DAVID RONSEN,

Plaintiffs,

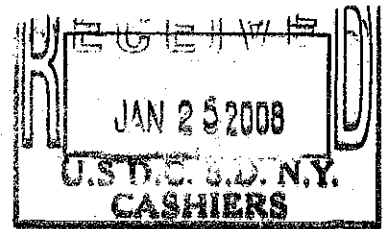
- against -

NUMEREX CORP.,

Defendant.

JUDGE KAPLAN

08 CV 0905
Civil Action No.



NOTICE OF REMOVAL

Defendant Numerex Corp. hereby removes this action from the Supreme Court of the State of New York in and for New York County to the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

As grounds for removal, Defendant states as follows:

1. Plaintiffs commenced this case on January 7, 2008 in Supreme Court, New York County by filing a Summons and Complaint captioned *Orbit One Communications, Inc. and David Ronsen v. Numerex Corp.* Index No. 600042/08. A copy of the Summons and Complaint is attached hereto as Exhibit A.
2. Plaintiffs served Defendant with the Summons and Complaint on January 8, 2008.
3. This case is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1), as there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

4. At the time Plaintiffs commenced this action, and at the time Defendants filed this Notice of Removal, the citizenship of each party was and is as follows:

a. **Plaintiff David Ronsen was and is a citizen of Montana.**

The following facts support the conclusion that Mr. Ronsen was and is domiciled in Montana, and thus a citizen of Montana:

- Mr. Ronsen admits that he is a resident of Montana (*see* Ex. A, ¶ 12);
- The Clerk of Gallatin County, Montana, advised the undersigned that Mr. Ronsen is registered to vote in Gallatin County, Montana;
- The complaint admits that Mr. Ronsen is employed in Bozeman, Montana (*see* Ex. A ¶ 12);
- Public databases indicate that Mr. Ronsen resides in and owns real property in Bozeman, Montana (*see* Ex. B (attached hereto));
- Records of the defendant confirm that Mr. Ronsen's spouse and children live in Bozeman, Montana;
- Records of the defendant confirm that Mr. Ronsen holds a Montana driver's license;
- Public databases indicate that Mr. Ronsen has automobiles registered in Montana (*see* Ex. C (attached hereto));
- Records of the defendant confirm that Mr. Ronsen has a bank account in Bozeman, Montana;
- Records of the defendant confirm that Mr. Ronsen pays taxes to the State of Montana.

In determining the citizenship of a natural person, a court should consider the following factors: “voting registration; place of employment; current residence; location of real and personal property; location of spouse and family; driver’s license; automobile registration; location of bank account; payment of taxes; tax return address; and location of a person’s physician.” *Gutierrez v. Fox*, 966 F. Supp. 214, 217 (S.D.N.Y.1997) (citing cases and *Moore’s Federal Practice* ¶ 102.36).

b. Plaintiff Orbit One Communications, Inc. was and is a citizen of Montana.

The following facts support the conclusion that Orbit One Communications, Inc. is a citizen of Montana:

- Orbit One Communications, Inc. is admittedly incorporated in the State of Montana and is a corporation in good standing according to records provided by the Montana Department of State (*see* Ex. A, ¶ 11; Ex. D (attached hereto));
- The Complaint states that Orbit One’s offices were in Bozeman Montana before it discontinued operations as an active business (*see* Ex. A, ¶¶ 12, 25);
- The President, Director, and registered agent of Orbit One Communications, Inc. are all Mr. Ronsen, according to records provided by the Montana Department of State (*see* Ex. D) and Mr.

Ronsen is a resident of Montana, according to the Complaint (*see* Ex. A, ¶ 12);

- Dun & Bradstreet lists Orbit One Communications as having its address in Bozeman, Montana (*see* Ex. E (attached hereto));

Accordingly, for purposes of removal, Orbit One Communications, Inc. was a citizen of Montana when the Complaint was filed and remains so to date. *See Circle Indus. USA v. Parke Const. Group*, 183 F.3d 105, 108 (2d Cir. 1999) (holding that inactive corporation is citizen of state where incorporated and where last conducted business).

c. Defendant, Numerex Corp. was and is a citizen of Pennsylvania and Georgia.

Numerex Corp. is a publicly traded corporation. It is incorporated in Pennsylvania and had its principal place of business in Atlanta, Georgia. Its status has not changed since the filing of the Complaint.

5. Accordingly, because plaintiffs have citizenship diverse from the citizenship of defendant, there is complete diversity for purposes of 28 U.S.C. §§ 1332 and 1441.

6. Plaintiffs are seeking over \$20 million in damages, hence satisfying 28 U.S.C. § 1332(a)'s amount in controversy requirement. (Ex. A, ¶¶ 95, 101, 106.)

7. No defendant in this action is a citizen of New York. Therefore, all requirements are satisfied for removal under to 28 U.S.C. § 1441.

8. Removal venue is properly laid in the United States District Court for the Southern District of New York because the Supreme Court of the State of New York, New York County is within the Southern District of New York. *See* 28 U.S.C. § 1446(a).

9. Defendant is filing this Notice of Removal within 30 days of receipt of the initial pleading on January 8, 2008, as mandated by 28 U.S.C. § 1446(b). Accordingly, removal of this action is timely.

10. Pursuant to 28 U.S.C. §§ 1446(a) and 1447(b), all papers and exhibits filed in the state court action are attached hereto as Exhibit A.

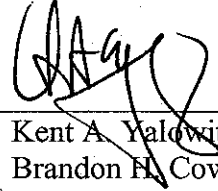
11. Pursuant to 28 U.S.C. §1446(d), copies of this Notice of Removal shall be served upon plaintiffs and filed forthwith in the Office of the Clerk of the Supreme Court of the State of New York in and for New York County.

WHEREFORE, Numerex prays that the state court action be removed to this Court.

Dated: New York, New York
January 25, 2008

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By



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